



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 220328-0080]

RIN 0648-BL00

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Dolphin and Wahoo Fishery of the Atlantic; Amendment 10

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 10 to the Fishery Management Plan (FMP) for the Dolphin and Wahoo Fishery of the Atlantic (Dolphin and Wahoo FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule revises the annual catch limits (ACLs), accountability measures (AMs), and additional management measures for dolphin and wahoo. The additional management measures address commercial trip limits, authorized fishing gear, the operator permit (card) requirement for dolphin and wahoo, and the recreational vessel limit for dolphin. Amendment 10 also revises the acceptable biological catch (ABC) and sector allocations for both dolphin and wahoo. The purpose of this final rule and Amendment 10 is to base conservation and management

measures for dolphin and wahoo on the best scientific information available and increase net benefits to the fishery.

DATES: This final rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Amendment 10, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-10-changes-catch-levels-sector-allocations-accountability-measures-and-management>.

Written comments regarding the burden hour estimates or any other aspects of the collection of information requirements contained in this final rule may be submitted at any time by email to Adam Bailey, NMFS Southeast Regional Office, adam.bailey@noaa.gov, or to www.reginfo.gov/public/do/PRAMain.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727-824-5305, or email: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: The dolphin and wahoo fishery in Federal waters from Maine south to the Florida Keys in the Atlantic is managed under the Dolphin and Wahoo FMP. The Dolphin and Wahoo FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On December 23, 2021, NMFS published a notice of availability for Amendment 10 and requested public comment (86 FR 72911). NMFS approved Amendment 10 on March 17, 2022. On January 14, 2022, NMFS published a proposed rule for Amendment 10 and requested public comment (87 FR 2389). The proposed rule and Amendment 10 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 10 and implemented by this final rule is described below.

Background

The current total ACLs for both dolphin and wahoo were added to the FMP in 2014 through Amendment 5 to the Dolphin and Wahoo FMP (Amendment 5), and are based on the Council's Scientific and Statistical Committee's (SSC) ABC recommendations using the third highest landings value during 1999-2008 (79 FR 32878; June 9, 2014). The landings data during that time period did not include recreational landings from Monroe County, Florida, and were based on recreational data from the Marine Recreational Information Program's (MRIP) Coastal Household Telephone Survey (CHTS) method. In April 2020, the Council's SSC recommended new ABC levels for dolphin and wahoo using the third highest annual commercial and recreational landings value during 1994-2007. These landings include recreational landings from Monroe County, Florida, and used MRIP's Fishing Effort Survey (FES) method, which is considered more reliable and

robust compared to the CHTS survey method. The new ABC recommendations for dolphin and wahoo are also based on the new weight estimation procedure from NMFS Southeast Fisheries Science Center (SEFSC) that uses a 15 fish minimum sample size and represents the best scientific information available. This final rule revises the total ACLs for dolphin and wahoo to equal the new ABC values.

The current sector allocations for dolphin were added to the FMP in 2016 through Amendment 8 to the Dolphin and Wahoo FMP (Amendment 8), with 10.00 percent of the total ACL to the commercial sector and 90.00 percent of the total ACL to the recreational sector (81 FR 3731; January 22, 2016). In 2015, the commercial sector was closed because the commercial ACL was met during that fishing year. In Amendment 8, the Council set the commercial allocation at the average of the percentages of the total commercial catch for 2008-2012, and the resulting 10 percent of the total ACL for the commercial allocation was expected to prevent subsequent closures of the commercial sector. The current sector allocations for wahoo were added to the FMP in 2014 through Amendment 5, with 3.93 percent of the total ACL to the commercial sector and 96.07 percent of the total ACL to the recreational sector. The Council decided on these wahoo allocations by balancing long-term catch history with recent catch history, and determined this method as the most fair and equitable way to allocate

fishery resources since it considered past and present participation. The current allocations for both dolphin and wahoo were applied to the respective species' total ACLs (equal to the ABCs) to obtain the sector ACLs.

Amendment 10 specifies commercial and recreational allocations for dolphin at 7.00 percent and 93.00 percent, respectively. For wahoo, Amendment 10 specifies commercial and recreational allocations at 2.45 percent and 97.55 percent, respectively. These allocations are applied to the respective species' revised total ACLs (equal to the proposed ABCs) using the third highest landings value during 1994-2007 to determine the new sector ACLs. The revised sector ACLs for dolphin and wahoo were derived from landings which include recreational landings from Monroe County, Florida, use MRIP's FES method, and SEFSC new weight estimation procedure. For dolphin, the Council has determined that the revised sector allocations and revised sector ACLs would avoid a decrease in the current pounds of dolphin available to either sector's ACL. For wahoo, the Council's intent is to maintain the current commercial ACL and allocate the remaining revised ACL to the recreational sector.

Amendment 10 and this final rule do not make any changes to the commercial AMs for dolphin or wahoo. The current recreational AMs for dolphin and wahoo were added to the FMP in 2014 through Amendment 5, and do not contain

an in-season AM but instead require monitoring for persistence in recreational landings during the year following any recreational ACL overage. Further, the current recreational post-season AMs state that if the combined commercial and recreational landings exceed the combined commercial and recreational ACLs, and dolphin and wahoo are overfished, the recreational ACL for the following year will be reduced by the amount of the recreational overage in the prior fishing year, and the recreational fishing season will be reduced by the amount necessary to ensure recreational landings do not exceed the reduced ACL. The Regional Administrator (RA) will determine, using the best scientific information available, if a reduction in the recreational ACL and a reduction in the length of the following fishing season is unnecessary. These recreational post-season AMs for dolphin and wahoo are not viable because the post-season AMs would not be triggered as there is not a peer-reviewed stock assessment for dolphin and wahoo, and such assessment is unlikely to be conducted in the near future. Therefore, there is no likely method to determine their stock status. This final rule establishes a trigger to implement post-season AMs and specifies the post-season AMs that may be triggered for dolphin and wahoo and that are not based on their stock status.

In 2017, Regulatory Amendment 1 to the Dolphin and

Wahoo FMP and the associated final rule implemented the current commercial trip limit for dolphin of 4,000 lb (1,814 kg), round weight, that is in effect once 75 percent of the commercial ACL is reached (82 FR 8820; January 31, 2017). Prior to reaching 75 percent of the commercial ACL, there is no commercial trip limit for dolphin. In 2004, the final rule for the original Dolphin and Wahoo FMP implemented the current commercial trip limit for wahoo of 500 lb (227 kg); and a commercial trip limit of 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N latitude, for a vessel that does not have a Federal commercial vessel permit for dolphin and wahoo but has a Federal commercial vessel permit in any other fishery.

In 2004, the final rule for the original Dolphin and Wahoo FMP also implemented the currently authorized commercial gear types in the dolphin and wahoo fishery in the Atlantic Exclusive Economic Zone (EEZ) as automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that has on board gear types (including trap, pot, or buoy gear) other than authorized gear types may not possess dolphin or wahoo. In 2016, a commercial lobster association initially requested that the Council modify the fishing gear regulations to allow the lobster fishery's historical

practice of harvesting dolphin by rod and reel while in the possession of lobster pots to continue. This final rule allows a person aboard a vessel in the Atlantic EEZ that possesses both a Federal Atlantic Dolphin/Wahoo commercial permit and any valid Federal commercial permit(s) required to fish using trap, pot, or buoy gear; or is in compliance with permit requirements specified for the spiny lobster fishery in 50 CFR 622.400 to retain dolphin and wahoo caught by rod and reel while in possession of such gear types.

In 2004, the original Dolphin and Wahoo FMP and associated final rule implemented the requirement for a vessel operator or a crew member to hold a valid operator permit (also called an operator card) for the Atlantic dolphin and wahoo commercial permit or a charter vessel/headboat permit for Atlantic dolphin and wahoo to be valid. The operator permit requirement was implemented to improve enforcement within the fishery, aid in data collection, and decrease costs to vessel owners from fishery violations by vessel operators. However, in actuality, the benefits of operator permits to improve enforcement have not occurred as they have not been widely used as an enforcement tool since implementation. Rather, other methods of fishery enforcement, such as vessel permits and landings, have been used by law enforcement within the fishery. Because the expected benefits from

operator permits are not being realized, this final rule removes the requirement for operator permits in the dolphin and wahoo fishery.

The current dolphin recreational bag limit of 10 fish per person, not to exceed 60 fish per vessel in the Atlantic EEZ, was implemented by the original Dolphin and Wahoo FMP in 2004. Since then, interest in recreational harvest of dolphin has increased, and Council public testimony, especially from Florida and its constituents, has recommended a decrease in the recreational retention limits to further control recreational harvest. This final rule decreases the dolphin recreational vessel limit for charter vessels and private recreational vessels, excluding headboats. The dolphin individual recreational bag limit of 10 fish per person in the Atlantic EEZ remains unchanged.

Management Measures Contained in this Final Rule

Annual Catch Limits

Dolphin

The current total ACL for dolphin is 15,344,846 lb (6,960,305 kg), round weight. This final rule revises the total ACL for dolphin to 24,570,764 lb (11,145,111 kg), round weight, based on the ABC recommended by the Council's SSC. The revised total ACL is equal to the ABC as described in Amendment 10 and is based upon best scientific information available. Dolphin are highly fecund, spawn throughout a wide geographical range, and have an early age

at first maturity with a short generation time. Therefore, dolphin's life-history could most likely support the increase in the total ACL. The Report to Congress on the Status of U.S. Stocks indicates dolphin is not overfished, and is not undergoing overfishing. Additionally, the Council noted that based on the last 20 years of total landings data for dolphin, it appears unlikely that harvest would consistently exceed the revised total ACL. Commercial landings are well tracked through electronic dealer reporting requirements, there is a commercial trip limit in place, and recreational landings for dolphin exhibit relatively low percent standard errors (PSE). The Council also noted that setting the ACL equal to the ABC may allow the dolphin portion of the dolphin and wahoo fishery to take advantage of years of exceptionally high abundance of dolphin.

The current commercial and recreational ACLs for dolphin are 1,534,485 lb (696,031 kg), round weight, and 13,810,361 lb (6,264,274 kg), round weight, respectively. These are based on the current commercial and recreational allocations of 10.00 percent and 90.00 percent, respectively. The revised commercial and recreational ACLs for dolphin are 1,719,953 lb (780,158 kg), round weight, and 22,850,811 lb (10,364,954 kg), round weight, respectively. The revised dolphin sector ACLs are based on the commercial and recreational allocations of 7.00 percent

and 93.00 percent, respectively.

Wahoo

The current total ACL for wahoo is 1,794,960 lb (814,180 kg), round weight. This final rule revises the total ACL for wahoo to 2,885,303 lb (1,308,751 kg), round weight based upon the ABC recommended by the Council's SSC. The revised total ACL is equal to the ABC and is based upon best scientific information available. Wahoo also exhibit rapid growth rates, are highly migratory, and are sexually mature at an early age, so their life history also supports an increase in the ACL. The overfishing and overfished status of wahoo is unknown. However, recent studies found that wahoo did not show a negative decline in relative abundance in recent years. The Council noted that commercial landings for wahoo are also well tracked through electronic dealer reporting requirements, there is a commercial trip limit of 500 lb (227 kg), and that recreational landings for wahoo exhibit relatively low PSEs. The Council also noted that setting the ACL equal to the ABC will allow the wahoo portion of the dolphin and wahoo fishery to take advantage of years with exceptionally high abundance of wahoo.

The current commercial and recreational ACLs for wahoo are 70,542 lb (31,997 kg), round weight, and 1,724,418 lb (782,183 kg), round weight, respectively. These are based on the current commercial and recreational allocations of

3.93 percent and 96.07 percent, respectively. The revised commercial and recreational ACLs for wahoo are 70,690 lb (32,064 kg), round weight, and 2,814,613 lb (1,276,687 kg), round weight, respectively. The revised sector ACLs are based on the commercial and recreational allocations of 2.45 percent and 97.55 percent, respectively.

No biological effects are expected to the dolphin and wahoo stocks from these allocation changes because the revised sector ACLs would not change the revised total ACLs for dolphin and wahoo. The commercial sector for dolphin and wahoo has effective in-season AM already in place to help constrain commercial harvest, and this final rule contains modifications to the recreational post-season AMs to both stocks to reduce the risk that the recreational ACL is exceeded. In deciding on new sector allocations, the Council wanted to recognize the needs of the recreational sector for dolphin and wahoo which would exhibit higher landings than previously estimated, given the new accounting of recreational landings using MRIP's FES method. At the same time, the Council did not want to reduce the commercial ACLs on a pound basis for dolphin and wahoo and noted that the revised allocations and sector ACLs would strike a balance between the needs of both sectors.

Accountability Measures

Dolphin

This final rule revises the recreational AMs for dolphin. The current in-season closure and post-season AM based on stock status will be replaced. The revised recreational AM is a post-season AM that would be triggered in the following fishing year if the total ACL (commercial and recreational ACLs, combined) is exceeded. The Council's intent is to avoid closing recreational harvest in-season and extend maximum fishing opportunities to the recreational sector without triggering the recreational AM, as long as the commercial sector is under harvesting its sector ACL. The revised recreational AM trigger will also help ensure sustainable harvest by preventing the total ACL from being exceeded consistently. Once triggered, the revised post-season recreational AM would reduce the length of the following recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded in the following year. However, the length of the recreational season would not be reduced if the RA determines, using the best available science, that the season reduction is not necessary to keep the recreational ACL from being exceeded in the following year. The Council noted that there would be a relatively low likelihood of the recreational AM for dolphin being triggered, because the revised recreational ACL is based on the updated ABC, which is set at a relatively high level of landings that is not often observed in the dolphin portion of the dolphin

and wahoo fishery. Additionally, any determination that the total ACL had been exceeded would allow for the monitoring of landings during the following season to evaluate whether the elevated landings from the previous fishing year are continuing to persist. That information would inform decisions on whether a fishing season closure would actually need to occur to constrain harvest to the ACL.

Wahoo

This final rule revises the recreational AMs for wahoo. The current in-season closure and post-season AM based on stock status would be replaced. The revised recreational AM is a post-season AM that would be triggered in the following fishing year if the recreational ACLs are constant and the 3-year geometric mean of landings exceeds the recreational ACL. As described in Amendment 10, whenever the recreational ACL is changed, a single year of landings would be used for an overage determination, beginning with the most recent available year of landings, then a 2-year average of landings from that single year and the subsequent year, then a 3-year average of landings from those 2 years and the subsequent year, and thereafter a progressive running 3-year average, calculated as the geometric mean, would be used to determine if the recreational AM trigger has been met. The Council noted this approach would allow the recreational AM to be triggered if the ACL was exceeded on a consistent basis. A

3-year geometric mean would help to smooth the data and potentially avoid implementing restrictive recreational post-season AMs unnecessarily if there was an anomaly in the recreational landings estimates during those 3 years that was not accurately reflecting an actual increase in the harvest of wahoo. It was also noted by the Council that the geometric mean is less sensitive to being affected by abnormally large variations in landings estimates than the arithmetic mean or a single year point estimate. Once triggered, the post-season recreational AM would reduce the length of the following recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded in that year. However, the length of the recreational season would not be reduced if the RA determines, using the best available science, that a fishing season reduction is not necessary to keep the recreational ACL from being exceeded in the following year. Additionally, any determination that the ACL had been exceeded would allow for the monitoring of landings for the following season to evaluate whether the elevated landings from the previous year are continuing to persist. That information would inform decisions on whether a late season harvest closure would actually need to occur. The Council also noted the relatively equitable distributed effects of a shortening of the recreational season, as wahoo are often targeted and caught late in the year in many areas of the

Atlantic region.

Commercial Trip Limits and Authorized Gear Exemption

For vessels with a commercial permit for Atlantic dolphin and wahoo, under the current trip limits, dolphin and wahoo may only be harvested and possessed with the authorized gear types onboard. These gear types are automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear. Possession on the vessel of any other gear type results in a prohibition of the possession of any dolphin or wahoo.

American lobster fishers requested to the Council that they be allowed to possess dolphin or wahoo while they moved from one lobster pot to the next. The Council considered an authorized gear exemption based on a request from the Atlantic Offshore Lobstermen's Association to allow the historical practice of harvesting dolphin with rod and reel while in the possession of lobster pots to continue and decided to take a broader approach to allow vessels fishing with trap, pot, or buoy gear to possess dolphin or wahoo as long as the dolphin or wahoo were harvested with rod and reel gear. This final rule allows for a new category of commercial trip limits for dolphin and wahoo based on an authorized gear exemption for trap, pot, and buoy gear. This final rule will allow for the harvest and retention of 500 lb (227 kg), gutted weight, of dolphin and 500 lb (227 kg) of wahoo, on board a vessel in

the Atlantic EEZ that possesses both an Atlantic Dolphin/Wahoo commercial permit and any valid Federal commercial permit(s) required that allow a vessel to fish using trap, pot, or buoy gear or is in compliance with the permitting requirements for the spiny lobster of the Gulf of Mexico and South Atlantic as described at 50 CFR 622.400, caught by rod and reel while in possession of such gear types. The commercial trip limits under the authorized gear exemption may not be combined with the current commercial trip limits for commercially permitted dolphin and wahoo vessels. The Council determined that this additional regulatory flexibility would have positive economic effects within the fishery while also limiting the potential for any unforeseen significant increases in commercial landings through the specific setting of the 500 lb (227 kg), gutted weight, trip limit.

Operator Permits

Currently, an operator of a vessel with either a commercial permit or a charter vessel/headboat permit for dolphin and wahoo is required to have an operator permit. Such operator permit must be onboard the vessel and the vessel owner is required to have a permitted operator onboard the vessel while it is at sea or offloading. This operator permit requirement was implemented in 2004, through the original FMP for dolphin and wahoo, as a way to assist in law enforcement efforts within the fishery by

holding the vessel operator accountable for any violation of regulations and to aid in data collection (69 FR 30235; May 27, 2004).

This final rule removes the current requirements for operator permits and permitted operators for both the dolphin and wahoo commercial and charter vessel/headboat permitted vessels. At the March 2016 Council meeting, the NMFS Office of Law Enforcement (OLE) gave a presentation on operator permits, and stated that the operator permits are not used extensively by OLE or their law enforcement partners. The Council noted the potential value for operator permits in aiding law enforcement efforts, but the inconsistent requirements between Atlantic fisheries greatly diminishes this utility. Public testimony indicated that operator permits are rarely checked by enforcement personnel during fishing trips and are burdensome for fishermen to renew and maintain. The Council determined that the limited use of operator permits in the dolphin and wahoo fishery did not outweigh the cost to fishermen to obtain the permit, and removing this requirement would yield positive social, economic, and administrative benefits.

Recreational bag and vessel limits for dolphin

For Atlantic dolphin, the current bag and possession limits are 10 fish per person, not to exceed 60 fish per vessel, whichever is less, except onboard a headboat where

the limit is 10 per paying passenger. This final rule decreases the recreational dolphin vessel limit from 60 fish per vessel to 54 fish for charter vessels and private recreational vessels, excluding headboats, in the Atlantic EEZ. The recreational bag limit for private recreational anglers and passengers onboard charter vessels and headboats will remain at 10 fish per person in the Atlantic EEZ. As a result of the possession limit reduction in this final rule, the total estimated annual reduction in recreational landings is expected to be 114,051 lb (51,733 kg), round weight. Data analysis in Amendment 10 demonstrated that most of the recreational trips in the Atlantic EEZ targeting dolphin harvested less than 10 fish per vessel. Therefore, as a result of the very small proportion of recreational trips that might reach the revised vessel limit of 54 fish per vessel, no change in fishing activity or behavior is anticipated. The Council noted that one of the goals of the Dolphin and Wahoo FMP is to maintain a precautionary approach to management. While there is no Southeast Data and Assessment Review stock assessment for dolphin and the stock is listed as not overfished or undergoing overfishing, the Council heard public testimony, particularly from anglers in Florida, that dolphin abundance appears to be low and they are concerned over the health of the dolphin stock and the associated fishery. The Council determined that a coast-

wide reduction in the vessel limit was appropriate to maintain consistency of regulations across the region in the retention limits for dolphin and noted that such a change in retention limits would lead to more substantial harvest reductions than a Florida-specific or regional approach.

Management Measures in Amendment 10 Not Contained in this Final Rule

Acceptable Biological Catch

The current ABCs for dolphin and wahoo were added to the FMP in 2014 through Amendment 5, and are based on the Council's SSC's recommendations using the third highest landings value during 1999-2008. These landings did not include recreational landings from Monroe County, Florida, and were based on recreational data from the MRIP CHTS method. In April 2020, the Council's SSC recommended new ABC levels for dolphin and wahoo using the third highest landings value during 1994-2007. These landings include recreational landings from Monroe County, Florida, and used MRIP's FES method, which is considered more reliable by the Council's SSC, the Council, and NMFS, and more robust compared to the MRIP CHTS survey method. The new ABC recommendations within Amendment 10 for dolphin and wahoo are also based on the new weight estimation procedure from the SEFSC that uses a 15 fish minimum sample size and represents the best scientific information available.

Sector Allocations

As discussed, Amendment 10 revises the commercial and recreational allocations for both dolphin and wahoo. For dolphin, the current commercial and recreational allocations are 10.00 percent and 90.00 percent, respectively. The new dolphin sector allocations result in commercial and recreational allocations of 7.00 percent and 93.00 percent, respectively. For wahoo, the current commercial and recreational allocations are 3.93 percent and 96.07 percent, respectively. The new wahoo sector allocations result in commercial and recreational allocations of 2.45 percent and 97.55 percent, respectively.

As discussed, in deciding on new sector allocations, the Council wanted to recognize the needs of the recreational sector for both dolphin and wahoo which would exhibit higher landings than previously estimated with the new accounting of recreational landings using MRIP's FES method. At the same time the Council did not want to reduce the commercial ACLs on a pound basis for dolphin and wahoo and noted that the proposed allocations and sector ACLs would strike a balance between the needs of both sectors.

Goals and Objectives

The goals and objectives of the Dolphin and Wahoo FMP were implemented through the original fishery management plan in 2004 and have not been revised since then. In 2016,

the Fisheries Allocation Review Policy (NMFS Policy Directive 01-119) encouraged the use of adaptive management with respect to allocation revisions, and recommended periodic re-evaluation and updating of the management goals and objectives of any FMP to ensure they are relevant to current conditions and needs. Amendment 10 revises these Dolphin and Wahoo FMP goals and objectives in response to the 2016 Fisheries Allocation Review Policy and ensures the goals and objectives reflect the current dolphin and wahoo fishery. Specifically, the revised goals and objectives seek to manage the dolphin and wahoo fishery using a precautionary approach that maintains access, minimizes competition, preserves the social and economic importance of the fishery, as well as promotes research and incorporation of ecosystem considerations where practicable.

Comments and Responses

NMFS received 52 comment submissions during the public comment period on the notice of availability and proposed rule for Amendment 10. Comment submissions were from the general public, for-hire vessel owners, sport-fishing associations, businesses, and non-governmental organizations. The majority of the comments were against one or more of the proposed actions for dolphin. One of the comments was submitted jointly by various entities and included over 6,000 individual signatories on a petition

against approval of Amendment 10 and requested that NMFS instead implement more restrictive management measures for dolphin. NMFS acknowledges and agrees with the comments in favor of the actions in the notice of availability and proposed rule from the general public, recreational sport-fishing interests, and commercial fishing interests. Comments in opposition, and those that requested additional information about the actions contained in the notice of availability and proposed rule, are summarized by topic area below, along with NMFS' responses.

Comment 1: The final recommendations of the Council on Amendment 10, along with underlying conclusions and recommendations of its SSC for the revised ABCs, are not based upon the best scientific information available. For both dolphin and wahoo, the proposed ABC recommendations ignore the most recent 14 years of landings data. For dolphin specifically, the downward population trend in the fishery does not support an increase in the ABC, total ACL, and sector ACLs, in the absence of a stock assessment.

Response: NMFS disagrees. The Council's SSC recommended the ABC for dolphin and wahoo based on Level 4 of their ABC Control Rule for un-assessed species, which is a general procedure used by the SSC for species for which an increase (beyond current range of variability) in catch is not expected to result in a decline of the stock. The SSC had many robust discussions over the range of years to

use for recommending the revised ABC to the Council and decided to use years that were more representative of the fishery's historical tendency to harvest these species, without regulations such as ACLs in place at that time. The SSC then evaluated the landings within that time period, for any indication that those average landings had been potentially detrimental to the health of the stock. The SSC did not use the 2008 fishing year in the range of years because of the economic recession at that time. The ACLs for dolphin and wahoo were originally implemented in 2012 (77 FR 15916; March 16, 2012). The 2015 fishing year was a year of unusually high landings of dolphin that resulted in an early closure of the commercial sector (80 FR 36249; June 24, 2015). The SSC also sought to avoid reducing the commercial or recreational sectors' harvest opportunities for dolphin and wahoo absent any adverse biological risk to the stock, especially given the highly migratory nature of the species and its life-history, including high fecundity. Thus, the SSC recommended the Council use the third highest landings value for the time series of 1994-2007. The proposed ABC recommendations for dolphin and wahoo also use MRIP FES data, incorporate recreational landings from Monroe County, Florida, updated commercial landings data, and SEFSC new weight estimation procedures. The ABC recommendations and resulting ACLs for dolphin and wahoo adhere to the SSC's recommendations, and their biological,

economic, social, and administrative effects were analyzed using the past 5 years of data and then reviewed by the SSC, NMFS Southeast Regional Office, Council, and SEFSC, who certified Amendment 10 is based on the best scientific information available.

NMFS acknowledges that there is no peer-reviewed stock assessment for dolphin or wahoo (such as the Southeast Data, Assessment, and Review assessment process). However, dolphin are highly fecund, spawn year-round throughout a wide geographical range, have an early age at first maturity, and a short generation time. Therefore, dolphin's life-history could most likely support the increase to the ABC (and ACL), even without a stock assessment.

Further, the difference in accounting for recreational landings under the older MRIP CHTS and newer MRIP FES methods is a factor in the increase in the catch limits. When compared to the most recent 5-year and 3-year average landings, analysis in Amendment 10 revealed the new ACLs for dolphin are not expected to be reached. If they are reached, the current in-season commercial AMs and revised recreational AMs would help to reduce the risk of any overages that could possibly occur in the future.

Comment 2: NMFS should further reduce the recreational vessel limit for dolphin, as the proposed reduction from 60 fish per vessel to 54 fish per vessel in Amendment 10 is not enough to protect the stock.

Response: Despite the lack of a dolphin stock assessment or other biological information indicating a need to reduce dolphin harvest, the Council was responsive to public input expressing harvest related concerns. In Amendment 10, the Council considered a number of vessel limit alternatives for dolphin, including the current 60 dolphin per vessel limit and reduced limits of 54, 48, 42, 40, and 30. Reduced recreational vessel limits for dolphin were particularly recommended by constituents from Florida. The Council, in deciding what vessel limit alternative to select, balanced the economic hardship that any reductions would cause the for-hire industry, especially in North Carolina, with the need to facilitate achieving optimum yield within the fishery. Further, no evidence indicates that, if dolphin were not harvested in North Carolina and areas northward, they would subsequently survive and make it back to Florida. To the contrary, peer-reviewed literature actually indicates movement of dolphin from the Florida Keys to North Carolina and northward. Analysis in Amendment 10 showed that larger reductions in recreational harvest through vessel limit changes was best achieved when considering the entire Atlantic (Maine to Florida on the Atlantic side), and not just Florida, or even Florida, Georgia, and South Carolina combined. In Amendment 10, the Council selected the revised dolphin vessel limit of 54 fish to effect a vessel limit reduction, while balancing

the overall needs of the fishery throughout its full range.

Comment 3: Recreational and commercial landings of dolphin have been in decline (especially in the past 5 years), and reduced quantities of larger sized dolphin in the Florida Keys have been observed in past 5-10 years. NMFS and the Council should consider alternative, more proactive methods to conserve dolphin such as: reducing private recreational bag limit; extending the applicability of the current minimum size limit of 20 inches (50.8 cm), fork length (FL) to all applicable geographical areas (Maine to east coast of Florida), or increasing the minimum size; implementing a lower commercial trip limit; and banning the use longline gear for the commercial sector.

Response: NMFS is aware of reports of the decline in dolphin availability, especially large-sized dolphin in the Florida Keys. This could be due to the highly migratory fish moving out of the area or going deeper in search of suitable temperature and food availability. Recent peer-reviewed literature supports behavioral thermoregulation by dolphin, and their northern movement in response to increasing sea surface temperature. Studies have shown that seasonal abundance of dolphin along the east coast of the U.S. and the Gulf of Mexico is heavily influenced by sea surface temperature and distance to temperature fronts, chlorophyll-a concentration, and *Sargassum* mats. The Mid-Atlantic and New England Councils have not reported a

decline in dolphin availability and large sized fish. In fact, some commenters on the notice of availability and proposed rule for Amendment 10 stated that the perceived paucity of dolphin availability and large sized individuals off Florida was related to warming ocean temperatures and that the fish are not returning as far south as they used to 15 years ago.

Comment 4: NMFS should not approve the proposed post-season recreational AM for wahoo. Creating a shorter fishing season would incentivize a race by recreational fishers to meet the recreational ACL and would represent a disadvantage to fishers whose livelihoods depend on a full fishery season.

Response: NMFS disagrees. The current recreational AM for wahoo which is in place prior to this final rule states that, if recreational landings exceed the recreational ACL, then during the following fishing year recreational landings will be monitored for persistence in increased landings. If the recreational ACL is exceeded, it will be reduced by the amount of the recreational overage in the following fishing year and the recreational season will be reduced only if the species is overfished and the total ACL is exceeded. This current AM cannot be triggered, because there is no stock assessment for wahoo and therefore its stock status is unknown and cannot be determined to be "overfished." There is also no recreational in-season AM

for wahoo proposed in Amendment 10. Therefore, a functional and effective post-season AM is required to prevent possible adverse biological effects to the wahoo stock if the recreational ACL is exceeded. The revised post-season recreational AM for wahoo would reduce the length of the following recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded in the following year. However, the length of the recreational season will not be reduced if the RA determines, using the best available science, that it is not necessary. The economic effects of a reduced fishing season would depend on the severity of any season reduction, the timing, and the availability of other species that could be suitable substitutes for wahoo. Fishers could also determine the subsequent trade-offs between reduced fishing seasons or lower recreation bag/vessel limits and longer seasons. The possibility of a shorter fishing season occurring as a result of the new recreational AM being implemented could work to disincentivize fishers from exceeding the recreational ACL in the first place and thereby help to protect the stock and fishing opportunities.

Additional NMFS Public Comment Feedback

NMFS notes that in March 2022, Florida approved a final rule for the state with the following actions for dolphin that will be effective May 1, 2022, in state waters

only: a recreational harvester may not harvest, land, or possess per day more than 5 dolphin; recreational harvesters aboard a private recreational vessel may not collectively possess or land more than 30 dolphin, regardless of the number of licensed or license-exempt persons onboard; and the daily bag and possession limit for captains and crew on for-hire vessels is zero."

NMFS also notes that size limits, commercial trip limits, and longline gear changes were outside the scope of actions considered by the Council in Amendment 10. NMFS has decided to respond in a general manner to these comments in this final rule given the volume of comments received and interest concerning these issues, even though Amendment 10 does not contain that information. This serves to better inform the public of some of the dolphin regulations.

While a number of commenters requested that a commercial trip limit be put in place, current Federal regulations do in fact already include a dolphin commercial trip limit. The commercial trip limit of 4,000 lb (1,814 kg), round weight, comes into effect when 75 percent of the commercial ACL is reached. With respect to comments requesting changes to the recreational bag limits for dolphin, prohibiting the retention of dolphin by captain and crew, extending the current minimum size limit to all geographical applicable areas (Maine to east coast of Florida), as well as the comments regarding additional

changes to the vessel limit, the Council is considering the development of a subsequent amendment for dolphin. The possible new amendment could consider these items for changes by the Council. The commenters' range of suggestions for recreational bag limits (8, 5, or 3 per person), vessel trip limits (54, 40, or 30 fish), minimum size limits (extending range of current limit applicability and increasing the limit to 24 inches (61 cm), FL, could be used as alternatives for these actions if they were to be included in an amendment. The continued use of longline gear by the commercial sector for dolphin may also be considered by the Council in a future amendment.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 10, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this final rule, why it is being implemented, and the purposes of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this preamble. The objectives of this final

rule are to base conservation and management measures on the best scientific information available and increase net benefits to the Nation, consistent with the Magnuson-Stevens Act and its National Standards.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS did not receive any comments from SBA's Office of Advocacy on the certification in the proposed rule. NMFS did receive three comments from the public on the economic analysis in Amendment 10. Two comments suggested that Amendment 10 would adversely affect the economy. NMFS disagrees with these comments and believes that Amendment 10 would result in net economic benefits to the Nation. Based on NMFS's analysis, NMFS expects that Amendment 10 would result in net economic benefits of between \$9.16 and \$10.17 million (in 2019 dollars) per year, on average, over the next 5 years. The comments provided no specific information that would provide a basis to alter the estimated net benefits.

One comment suggested that Amendment 10 would disproportionately benefit the commercial sector relative to the recreational sector. NMFS disagrees with this comment because the analysis conducted by NMFS indicates

that nearly 89 percent of the increase in net economic benefits to the Nation associated with Amendment 10 is expected to accrue to the recreational sector, while about 11 percent of the increase is expected to accrue to the commercial sector. The comment provided no specific information that would provide a basis to alter these estimates, and therefore NMFS continues to believe that the commercial sector would not disproportionately benefit from this final rule.

No changes to this final rule were made in response to public comments. The factual basis for the certification was published in the proposed rule and is not repeated here. Because this final rule is not expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none has been prepared.

This final rule contains a revision to existing collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This final rule revises existing requirements for the collection of information approved under OMB Control Number 0648-0205, Southeast Region Permit Family of Forms. NMFS is removing the requirements for an operator permit in the commercial and for-hire portions of the Atlantic dolphin and wahoo fishery as specified by 50 CFR 622.270(c). For the Federal

Permit Application for Southeast Region Issued Operator Card, NMFS estimates this final rule will decrease the annual number of respondents to 74 and decrease the annual number of responses to 74. Further, NMFS estimates the annual burden hours will decrease to 37 hours, and the annual burden cost will decrease to \$3,774. Public reporting burden for the Federal Permit Application for Southeast Region Issued Operator Card is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

NMFS invites the public and other Federal agencies to comment on any proposed and continuing information collections, which helps NMFS assess the impact of information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted on the following website:

www.reginfo.gov/public/do/PRAMain. Find this particular information collection by using the search function and entering the title of the collection or the OMB Control Number 0648-0205.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a

collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 622

Accountability measures, Annual catch limits, Atlantic, Commercial, Dolphin, Fisheries, Fishing, Recreational, Wahoo.

Dated: March 28, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.270;

a. Revise paragraphs (a)(1) and (2)

b. Revise paragraph (b)(1); and

c. Remove and reserve paragraph (c).

The revisions read as follows:

§ 622.270 Permits.

(a) * * *

(1) For a person aboard a vessel to be eligible for exemption from the bag and possession limits for dolphin or wahoo in or from the Atlantic EEZ or to sell such dolphin or wahoo, a commercial vessel permit for Atlantic dolphin and wahoo must be issued to the vessel and must be on board, except as provided in paragraph (a)(2) of this section.

(2) The provisions of paragraph (a)(1) of this section notwithstanding, a fishing vessel, except a vessel operating as a charter vessel or headboat, that does not have a commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery, is exempt from the bag and possession limits for dolphin and wahoo and may sell dolphin and wahoo, subject to the trip and geographical limits specified in § 622.278(a)(3). (A charter vessel/headboat permit is not a commercial vessel permit.)

(b) * * * (1) For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess Atlantic dolphin or wahoo, in or from the Atlantic EEZ, a valid charter vessel/headboat permit for Atlantic dolphin and wahoo must have been issued to the vessel and

must be on board.

* * * * *

3. In § 622.272, revise paragraph (a)(1) and add paragraph (a)(2) to read as follows:

§ 622.272 Authorized gear.

(a) * * * (1) *Authorized gear.* Except as allowed in paragraph (a)(2) of this section, the following are the only authorized gear types in the fishery for dolphin and wahoo in the Atlantic EEZ: Automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that has on board gear types other than authorized gear types may not possess a dolphin or wahoo.

(2) *Trap, pot, and buoy gear authorization.* A vessel in the Atlantic EEZ that possesses both a valid Federal commercial permit for Atlantic dolphin and wahoo and any Federal commercial permit(s) required that allow a vessel to fish using trap, pot, or buoy gear or that is in compliance with the permitting requirements for the spiny lobster fishery of the Gulf of Mexico and South Atlantic as described at § 622.400, is authorized to retain both dolphin and wahoo harvested by rod and reel while in possession of trap, pot, or buoy gear. See § 622.278(a)(2)(ii) for the amount of dolphin that may be retained under the commercial trip limits as described in this paragraph (a)(2). See § 622.278(a)(1)(ii) for the

amount of wahoo that may be retained under the commercial trip limits as described in this paragraph (a)(2).

* * * * *

4. In § 622.277, revise paragraph (a)(1)(i) to read as follows:

§ 622.277 Bag and possession limits.

* * * * *

(a) * * *

(1) * * *

(i) In the Atlantic EEZ--10, not to exceed 54 per vessel, whichever is less, except on board a headboat, 10 per paying passenger.

* * * * *

5. In § 622.278, revise paragraph (a) to read as follows:

§ 622.278 Commercial trip limits.

* * * * *

(a) *Trip-limited permits--*(1) *Atlantic wahoo.* (i) When using the fishing gear for wahoo and as authorized under § 622.272(a)(1), the trip limit for wahoo in or from the Atlantic EEZ is 500 lb (227 kg). This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(ii) When using the fishing gear for wahoo and as authorized and permitted as described under §

622.272(a)(2), the trip limit for wahoo in or from the Atlantic EEZ is 500 lb (227 kg). The trip limit in this paragraph (a)(1)(ii) may not be combined with the trip limit specified in paragraph (a)(1)(i) of this section.

(iii) See § 622.280(b)(1) for the limitations regarding wahoo after the ACL is reached.

(2) *Atlantic dolphin.* (i) Once 75 percent of the ACL specified in § 622.280(a)(1)(i) is reached, the trip limit is 4,000 lb (1,814 kg), round weight. When the conditions in this paragraph (a)(3)(i) have been met, the Assistant Administrator will implement this trip limit by filing a notification with the Office of the Federal Register. This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(ii) When using the fishing gear for dolphin and as authorized and permitted as described under § 622.272(a)(2), the trip limit for dolphin in or from the Atlantic EEZ is 500 lb (227 kg), gutted weight. The trip limit in this paragraph (a)(2)(ii) may not be combined with the trip limit specified in paragraph (a)(2)(i) of this section.

(iii) See § 622.280(a)(1) for the limitations regarding dolphin after the ACL is reached.

(3) *Vessels without a Federal dolphin and wahoo*

commercial permit. The trip limit for a vessel that does not have a Federal commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery is 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N. lat. (A charter vessel/headboat permit is not a commercial vessel permit.)

* * * * *

6. In § 622.280;

a. Revise the first sentence of paragraph (a)(1)(i);

b. Revise paragraph (a)(2);

c. Add paragraph (a)(3);

d. Revise the first sentence of paragraph (b)(1)(i);

and

e. Revise paragraph (b)(2).

The revisions and additions read as follows:

§ 622.280 Annual catch limits (ACLs) and accountability measures (AMs).

(a) * * *

(1) * * *

(i) If commercial landings for Atlantic dolphin, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,719,953 lb (780,158 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. * * *

* * * * *

(2) *Recreational sector.* If the total ACL specified in paragraph (a)(3) of this section is exceeded in a fishing year, then during the following fishing year, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season by the amount necessary to ensure that the recreational ACL is not exceeded during the fishing year following the total ACL overage. However, the recreational fishing season will not be reduced in the following fishing year if NMFS determines, based on the best scientific information available, that the reduction in the recreational fishing season is unnecessary. The recreational ACL is 22,850,811 lb (10,364,954 kg), round weight.

(3) *Total ACL.* The total ACL, commercial and recreation ACLs combined, for Atlantic dolphin, is 24,570,764 lb (11,145,111 kg), round weight.

(b) * * *

(1) * * *

(i) If commercial landings for Atlantic wahoo, as estimated by the SRD, reach or are projected to reach the commercial ACL of 70,690 lb (32,064 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. * * *

* * * * *

(2) *Recreational sector.* As described in the FMP, if average annual recreational landings, when determined using 3-year geometric mean, exceed the recreational ACL of 2,814,613 lb (1,276,687 kg), round weight, then in the following fishing year, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season by the amount necessary to ensure that the recreational ACL is not exceeded during the fishing year following the recreational ACL overage determination. However, the length of the recreational fishing season will not be reduced in the following fishing year if NMFS determines, based on the best scientific information available, that the reduction in the recreational fishing season is unnecessary.